

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 27, 2011 at 10:00 a.m.

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1. 11-92300-E-7 TC LANDSCAPE AND HEARING - MOTION FOR
SW #1 MAINTENANCE, INC. RELIEF FROM AUTOMATIC STAY
Thomas O. Gillis 7-13-11 [7]
ALLY FINANCIAL, INC., VS.

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 13, 2011. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Ally Financial, Inc. seeks relief from the automatic stay with respect to an asset identified as a 2005 Chevrolet Silverado, VIN ending in 0058. The moving party has provided the Declaration of Emmanuel Paymah to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Paymah Declaration does not state that the Debtor has failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,019.41, as stated in the Paymah Declaration, while the

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value of the asset is determined to be \$8,500.00, as stated in Schedules B and D filed by Debtor.

The Paymah Declaration also seeks to introduce evidence establishing the value of the asset. The Declaration seeks to set the value of the vehicle at \$8,725.00 the wholesale value suggested by the *NADA Guide*. Though the *NADA Guide* valuation is attached as an Exhibit, it is not properly authenticated and is inadmissible. Therefore, the only evidence as to value that is before the court is the Debtor's Schedules B and D setting the car's value as \$8,500.00.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Ally Financial, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Because the moving party has established that there is no equity in the asset for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has alleged adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow, Ally Financial, Inc., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan

documents granting it a lien in the asset identified as a 2005 Chevrolet Seilverado, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

2. [11-91002-E-7](#) PATRICIA CISNEROZ
RFM #1 Jeff Reich
CITIZENS AUTOMOBILE FINANCE, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
4-25-11 [9]

DISCHARGED 7-5-11

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 25, 2011. By the court's calculation, 93 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay as to the Estate and deny the motion as to the Debtor. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Citizens Automobile Finance seeks relief from the automatic stay with respect to an asset identified as a 2006 Chevrolet Equinox LT, VIN ending in 7039. The moving party has provided the Declaration of Cynthia Hoernel to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hoernel Declaration states that the Debtor failed to make 1 postpetition payment, with a total of \$434.94 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$13,032.14, as stated in the Hoernel Declaration, while the value of the asset is determined to be \$3,225.00, as stated in Schedules B and D filed by Debtor.

The Hoernel Declaration also seeks to introduce evidence establishing the value of the asset. Though the *NADA Guide* valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the *NADA Guide* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Cynthia Hoernel to be that she obtained the *NADA Guide* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court. The *NADA Guide* value is \$8,750.00.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on July 7, 2011. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Citizens Automobile Finance, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow, Citizens Automobile Finance its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2006 Chevrolet Equinox LT, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. Section 362(c)(2)(C).

No other or additional relief is granted.

3. [11-91705-E-7](#) JAMES/CLARA FOLKES
MDE #1 Robert L. Buchler
BANK OF THE WEST, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-28-11 [[14](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 28, 2011. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Bank of the West seeks relief from the automatic stay with respect to the real property commonly known as 2840 Abel Court, Modesto, California. The moving party has provided the Declaration of Kelly A. Collins to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Collins Declaration does not state that the Debtor has failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$256,823.79, as stated in the Collins Declaration, while the value of the property is determined to be \$135,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to Bank of the West, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Bank of the West, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2840 Abel Court, Modesto, California.

No other or additional relief is granted.

4. [11-91308](#)-E-7 RALPH PRATT
RNH #1 Julia P. Gibbs
AURORA LOAN SERVICES LLC, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-15-11 [[20](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 15, 2011. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Aurora Loan Services LLC seeks relief from the automatic stay with respect to the real property commonly known as 806 Pennsylvania Gulch Road, Murphys, California. The moving party has provided the Declaration of Evangiline Tillman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Tillman Declaration states that the Debtor failed to make 2 postpetition payments, with a total of \$2,018.26 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$322,955.46, (including \$182,334.16 secured by movant's first trust deed) as stated in the Tillman Declaration, while the value of the property is determined to be \$280,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Aurora Loan Services LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Aurora Loan Services LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 806 Pennsylvania Gulch Road, Murphys, California.

No other or additional relief is granted.

5. [11-92110](#)-E-7 CHRISTOPHER/KIM BURK
EDH #1 Matthew M. Spielberg
DEUTSCHE BANK NATIONAL
TRUST COMPANY, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-13-11 [9]

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 13, 2011. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's decision is to deny the Motion for Relief from the Automatic Stay without prejudice. No Appearance Required.

Deutsche Bank National Trust Company seeks relief from the automatic stay with respect to the real property commonly known as 103 Columbia Way, Sonoma, California. The moving party has provided the Declaration of Chris C. Chapman to introduce evidence which establishes that the Debtors are no longer the owners of the property, movant having purchased the property at a prepetition Trustee's Sale on November 29, 2010. Debtors are tenants at sufferance, and movant commenced an unlawful detainer action in Tuolumne County Superior Court on June 13, 2011.

Movant has not provided competent evidence that it is the owner of the property. An unauthenticated copy of a Trustee's Deed Upon Sale is provided as exhibit 1. The deed is not certified, so it has not been authenticated pursuant to Fed. R. Evid. 902. The declaration of Chris C. Chapman has been provided, who testifies that he is an attorney for Deutsche Bank National Trust Company, as Trustee. Though his declaration states that a "true and accurate copy" of the deed is attached as Exhibit 1, he provides no testimony as to how he knows it is a true and accurate copy. If he is merely repeating what he read at the county recorder's office, then this is hearsay. If he is merely stating that someone at Deutsche Bank told him that it is a true and correct copy, it is again hearsay. There is nothing in the evidence to establish that Mr. Chapman is an employee of Deutsche Bank, that he is authorized to speak as Deutsche Bank on the matter, and has access to the books and records of that

entity as part of his job from which he obtained a copy of the deed which was delivered to Deutsche Bank. FN.1.

FN.1. Merely because a person is an attorney does not make that person the super witness to testify as to all matters for his or her client. It may be that in this case Mr. Chapman personally worked on the foreclosure sale and received the deed for Deutsche Bank from the foreclosure trustee. However, his testimony under penalty of perjury does not so state.

The movant having failed to provide competent evidence that it is the owner of the property, the court denies the motion without prejudice. The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief From the Automatic Stay filed by Deutsche Bank National Trust, as Trustee, is denied without prejudice.

6. [11-91120](#)-E-7 ALVIN GUERRERO AND HEARING - MOTION FOR
ETL #1 MARLA KIESZ-GUERRERO RELIEF FROM AUTOMATIC STAY
Ben A. Roberts 7-1-11 [[29](#)]
JPMORGAN CHASE BANK, VS.

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 1, 2011. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The Motion for Relief from the Automatic Stay is denied without prejudice. No appearance required.

JPMorgan Chase Bank, National Association seeks relief from the automatic stay with respect to the real property commonly known as 1617 Dwight Lane, Modesto, California. The moving party has provided the Declaration of Daniel Isida to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

However, the Isida Declaration is completely deficient. In the Declaration, the Declarant fails to state how much is currently owed on the loan or how many postpetition payments Debtors have missed. Instead, the Declarant just refers the court to "Exhibit 3." This is insufficient. Declarant states that she has personal knowledge of this matter yet fails to provide any information beyond what the amount of the original loan was or when Debtor filed bankruptcy. Movant has failed to plead its case with the requisite specificity pursuant to Fed. R. Bankr. P. 9013. FN.1

FN.1. When a declarant is unable or unwilling to actually testify as to this information, but merely refers to some exhibit which the declarant may or may not have read, the court has serious doubts about the veracity of the statements in the declaration. In the future, when faced with such declarations, the court shall set the matter for a full evidentiary hearing at which live testimony will be presented and the attendance of the declarant compelled.

As the motion is unsupported by any evidence, it is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

7.	<u>11-91321</u> -E-7 GENE PARMENTIER PD #1 Pablo A. Tagre WELLS FARGO HOME MORTGAGE, VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-20-11 [17]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, other party in interest, and Office of the United States Trustee on June 20, 2011. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Home Mortgage seeks relief from the automatic stay with respect to the real property commonly known as 2231 Orchard Creek Drive, Newman, California. The moving party has provided the Declaration of Trina M.

Glover to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Glover Declaration states that the Debtor failed to make 1 postpetition payments, with a total of \$1,106.18 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$208,485.66 (including \$167,503.66 secured by movant's first trust deed), as stated in the Glover Declaration, while the value of the property is determined to be \$109,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Home Mortgage, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Wells Fargo Home Mortgage, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2231 Orchard Creek Drive, Newman, California.

No other or additional relief is granted.

8.	<u>11-91226-E-7</u> COLLEEN BROPHY PD #1 Cort V. Wiegand WELLS FARGO BANK, N.A., VS.	HEARING - MOTION FOR RELIEF FROM AUTOMATIC STAY 6-24-11 [12]
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 24, 2011. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 1815 El Dorado Drive, Arnold, California. The moving party has provided the Declaration of Teresa J. Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration states that the Debtor failed to make 2 postpetition payments, with a total of \$3,075.72 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$290,823.37 (including \$220,823.37 secured by movant's first trust deed), as stated in the Williams Declaration, while the value of the property is determined to be \$150,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 1815 El Dorado Drive, Arnold, California.

No other or additional relief is granted.

9. [11-91830](#)-E-7 DANIEL HOFFMAN
MWB #1 Patrick B. Greenwell
DEUTSCHE BANK NATIONAL
TRUST COMPANY, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-15-11 [[11](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 15, 2011. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Deutsche Bank National Trust Company seeks relief from the automatic stay with respect to the real property commonly known as 132 North Santa Ana Avenue, Modesto, California. The moving party has provided the Declaration of Amanda Wheeler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wheeler Declaration does not state that the Debtor has failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$332,011.44 (including \$298,698.04 secured by movant's first trust deed), as stated in the Wheeler Declaration, while the value of the property is determined to be \$162,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the

property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Deutsche Bank National Trust Company, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Deutsche Bank National Trust Company, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 132 North Santa Ana Avenue, Modesto, California.

No other or additional relief is granted.

10. [11-90533](#)-E-7 BRUNO RAMIREZ AND
PD #1 ADRIANA ALCARAZ
Thomas O. Gillis
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-8-11 [[18](#)]

DISCHARGED 7-5-11

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, other party in interest, and Office of the United States Trustee on June 8, 2011. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 2420 Ada Street, Modesto, California. The moving party has provided the Declaration of Trina M. Glover to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Glover Declaration states that the Debtor failed to make 3 postpetition payments, with a total of \$3,446.79 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$248,869.01 (including \$215,119.01 secured by movant's first trust deed), as stated in the Glover Declaration, while the value of the property is determined to be \$115,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the

debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on July 5, 2011. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or

trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2420 Ada Street, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. Section 362(c)(2)(C).

No other or additional relief is granted.

11. [11-91234-E-7](#) **SERGIO RODRIGUEZ**
RNH #1 *Pro Se*
FEDERAL NATIONAL MORTGAGE
ASSOCIATION, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-6-11 [[15](#)]

DISCHARGED 7-19-11

Local Rule 9014-1(f)(1) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), and Chapter 7 Trustee, on June 6, 2011. Notice of Hearing was subsequently served and filed on June 24, 2011. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted as to the Estate and denied as moot as to the Debtor. No appearance required.

Federal National Mortgage Association ("Fannie Mae") seeks relief from the automatic stay with respect to the real property commonly known as 1021 Beverly Drive, Modesto, California. The moving party has provided the

Declaration of Bounlet Louvan to introduce evidence which establishes that the Debtor is no longer the owner of the property, movant having purchased the property at a prepetition Trustee's Sale on January 6, 2011. Movant commenced an unlawful detainer action in Stanislaus County Superior Court and received a Writ of Possession on April 8, 2011.

Movant has provided a copy of the Trustee's Deed Upon Sale, which the Louvan Declaration authenticates, to substantiate its claim of ownership and a copy of the Writ of Possession issued by the state court. Based upon the evidence submitted to the court, and no opposition having been made by the Debtor[s] or the Trustee. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The Debtor was granted a discharge on July 19, 2011. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow Fannie Mae, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1021 Beverly Drive, Modesto, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The moving party has not alleged adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are immediately vacated to allow Federal National Mortgage Association and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1021 Beverly Drive, Modesto, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who has

been granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. Section 362(c)(2)(C).

No other or additional relief is granted.

12. [11-91940-E-7](#) TROY/DAWNA FROST HEARING - MOTION FOR
RCO #1 Patrick B. Greenwell RELIEF FROM AUTOMATIC STAY
SOVEREIGN BANK, VS. 6-20-11 [\[10\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 20, 2011. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Sovereign Bank seeks relief from the automatic stay with respect to the real property commonly known as 15496 Camino Del Parque So., Sonora, California. The moving party has provided the Declaration of Michele Green to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Green Declaration states that the Debtor failed to make one postpetition payment, with a total of \$2,223.39 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$353,349.54, (including \$254,662.34 secured by movant's first trust deed, FN. 1) as stated in the Green Declaration, while the value of the property is determined to be \$250,000.00, as stated in Schedules A and D filed by Debtor.

FN. 1. The court notes that the motion and the Green Declaration conflict as to the current amount owing on Sovereign Bank's note. The court will rely on the information provided by the Green Declaration.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Sovereign Bank, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow

Sovereign Bank, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 15496 Camino Del Parque So., Sonora, California.

No other or additional relief is granted.

13. [11-91042-E-7](#) MANJINDER/JASWINDER HEARING - MOTION FOR
PD #1 DHILLON RELIEF FROM AUTOMATIC STAY
Gary L. Huss 6-23-11 [[15](#)]
GMAC MORTGAGE, LLC, VS.

DISCHARGED 7-6-11

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, other party in interest, and Office of the United States Trustee on June 23, 2011. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted as to the Estate and denied as moot as to the Debtor. No appearance required.

GMAC Mortgage, LLC seeks relief from the automatic stay with respect to the real property commonly known as 2811 Blue Oak Court, Turlock, California. The moving party has provided the Declaration of John Castagna to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Castagna Declaration states that the Debtor failed to make three postpetition payments, with a total of \$7976.10 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$447,885.15 (including \$333,753.15 secured by movant's first trust deed), as stated in the Castagna Declaration, while the value of the property is determined to be \$278,520.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The Debtor was granted a discharge on July 6, 2011. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor. The Motion is granted as to the Estate.

The court shall issue a minute order terminating and vacating the automatic stay to allow GMAC Mortgage, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow GMAC Mortgage, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2811 Blue Oak Court, Turlock, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to the debtor, who was granted a discharge in this case, it is denied as moot pursuant to 11 U.S.C. Section 362(c)(2)(C).

No other or additional relief is granted.

14. [11-91350-E-7](#) DENNIS/JULLI CONDE
PD #1 Martha Lynn Passalacqua
US BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-29-11 [[17](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 29, 2011. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

U.S. Bank National Association seeks relief from the automatic stay with respect to the real property commonly known as 2732 Beatrice Lane, Modesto, California. The moving party has provided the Declaration of John Castagna to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Castagna Declaration states that the Debtor failed to make two postpetition payments, with a total of \$4,051.68 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$329,768.92, as stated in the Castagna Declaration, while the value of the property is determined to be \$206,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank National Association, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow U.S. Bank National Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2732 Beatrice Lane, Modesto, California.

No other or additional relief is granted.

15. [11-91656-E-7](#) **MICHAEL SAVINO AND** **HEARING - MOTION FOR**
ETL #1 **REBECCA SEELEY-SAVINO** **RELIEF FROM AUTOMATIC STAY**
 Michael R. Germain **7-8-11 [22]**
JPMORGAN CHASE BANK, N.A., VS.

Local Rule 9014-1(f)(2) Motion.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on July 8, 2011. By the court's calculation, 19 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

JPMorgan Chase Bank, National Association seeks relief from the automatic stay with respect to the real property commonly known as 16924 Estralita Drive, Sonora, California. The moving party has provided the Declaration of Krystal Javien to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

However, the Javien Declaration is completely deficient. In the Declaration, the Declarant fails to state how much is currently owed on the loan or how many postpetition payments Debtors have missed. Instead, the Declarant just refers the court to "Exhibit 3." This is insufficient as Exhibit 3 is not authenticated or offered under the penalty of perjury. Declarant states that she has personal knowledge of this matter yet fails to provide any information beyond what the amount of the original loan was or when Debtor filed bankruptcy.

The motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

16. [11-90266](#)-E-11 JOHNNY/TAMARA MATTHEWS HEARING - MOTION FOR
BER #1 David C. Johnston RELIEF FROM AUTOMATIC STAY
BANK OF STOCKTON, VS. 6-20-11 [\[54\]](#)

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, and Office of the United States Trustee on June 20, 2011. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is denied without prejudice. No appearance required.

Creditor Bank of Stockton's motion suffers from a service of process defect. The creditor failed to serve process on the 20 largest unsecured creditors as required by Federal Rule of Bankruptcy Procedure 4001(a)(1). Creditor only served process on Debtors, Debtor's attorney and the U.S. Trustee. This is insufficient. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

17. [11-90266](#)-E-11 JOHNNY/TAMARA MATTHEWS
MDM #1 David C. Johnston
AURORA BANK FSB, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
7-13-11 [[61](#)]

Local Rule 9014-1(f)(2) Motion.

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, parties requesting special notice, and Office of the United States Trustee on July 13, 2011. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is denied without prejudice. No appearance required.

Creditor Aurora Bank's motion suffers from service of process defects. First, the creditor failed to serve process on America's Servicing Company and Wells Fargo Bank Business Direct Real Estate, both of which were listed on Debtor's list of the 20 largest unsecured creditors. See Fed. R. Bankr. P. 4001(a)(1). Second, the creditor appears to have only served the Notice of Hearing on the other creditors but not the motion itself. Federal Rule of Bankruptcy Procedure 4001(a)(1) requires that the motion for relief from automatic stay be served on the 20 largest unsecured creditors. This is insufficient. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

18. [11-91570-E-7](#) BRYAN/JESSICA ANSELM
APN #1 Thomas P. Hogan
WELLS FARGO FINANCIAL, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-14-11 [[13](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 14, 2011. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Financial seeks relief from the automatic stay with respect to an asset identified as a 2005 Dodge Magnum, VIN ending in 9738. The moving party has provided the Declaration of Heidi Spidell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Spidell Declaration states that the Debtor failed to make one postpetition payment, with a total of \$441.25 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$11,121.68, as stated in the Spidell Declaration, while the value of the asset is determined to be \$4,800.00, as stated in Schedules B and D filed by Debtor.

The Spidell Declaration also seeks to introduce evidence establishing the value of the asset. Though the *NADA Official Used Car Guide* valuation is attached as an Exhibit, it is not properly authenticated.

The court will *sua sponte* take notice that the *NADA Official Used Car Guide* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Heidi Spidell to be that she obtained the *NADA Official Used Car Guide* valuation and is providing that to the court under penalty of perjury. The creditor and

counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court. The *NADA Official Used Car Guide* listed the value of the vehicle as \$11,400.00. The creditor also notes that Debtors filed a Statement Intention where they state that they intend to surrender the vehicle to the secured creditor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has little to no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is little to no equity in the asset for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the asset is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Financial, and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has alleged adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Wells Fargo Financial, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan

documents granting it a lien in the asset identified as a 2005 Dodge Magnum, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause.

No other or additional relief is granted.

19. [11-91571-E-7](#) **CRAIG JOHNSTON** **HEARING - MOTION FOR**
RNH #1 **Charles Hastings** **RELIEF FROM AUTOMATIC STAY**
SETERUS, INC., VS. **6-27-11 [15]**

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 7 Trustee on June 27, 2011. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Seterus, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 2156 Lily Gap Road, West Point, California. The moving party has provided the Declaration of Amy Wooten to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wooten Declaration states that the Debtor failed to make two postpetition payments, with a total of \$2,863.58 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$223,467.55, as stated in the Wooten Declaration, while the value of the property is determined to be \$70,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Seterus, Inc, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the

promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 2156 Lily Gap Road, West Point, California.

No other or additional relief is granted.

20. [11-91978-E-7](#) **RONNIE/MARILOU OLIVER** **HEARING - MOTION FOR**
RCO #1 **Robert D. Rodriguez** **RELIEF FROM THE AUTOMATIC**
SOVREIGN BANK, VS. **STAY (UNLAWFUL DETAINER)**
6-24-11 [\[14\]](#)

Local Rule 9014-1(f)(1) Motion. - Opposition Filed

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney and Office of the United States Trustee on June 24, 2011. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay was not properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is denied without prejudice. No appearance required.

Creditor Sovereign Bank's Motion suffers from a service of process defect. The Creditor incorrectly served process on Michael D. McGranahan as Trustee. The Trustee assigned to this case is Irma C. Edmonds. There is no evidence that service was served on Irma C. Edmonds and the court will not speculate as to whether or not the correct trustee was properly served. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

21. [11-90779](#)-E-7 JOSEPH TEDESCO
ND #1 David C. Johnston
U.S. BANK, N.A., VS.

CONT. HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
ON REAL PROPERTY
5-31-11 [[52](#)]

Local Rule 9014-1(f)(1) Motion.

Proper Notice Provided. The Proof of Service filed on May 31, 2011, states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee. By the court's calculation, 22 days' notice was provided. Continued to

Final Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

U.S. Bank National Association seeks relief from the automatic stay with respect to the real property commonly known as 3604 Sylvan Meadows Court, Modesto, California. The moving party has provided the Declaration of Anthony Forsberg to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Forsberg Declaration states that the Debtor failed to make two (2) postpetition payments, with a total of \$2,231.78 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$222,380.75 (including \$222,380.75 secured by movant's first trust deed), as stated in the Forsberg Declaration, while the value of the property is determined to be \$95,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow U.S. Bank National Association, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow U.S. Bank National Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3604 Sylvan Meadows Court, Modesto, California.

No other or additional relief is granted.

22. [11-90779-E-7](#) **JOSEPH TEDESCO** **HEARING - MOTION FOR**
PD #1 **David C. Johnston** **RELIEF FROM AUTOMATIC STAY**
GMAC MORTGAGE, LLC, VS. 6-27-11 [\[68\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, other party in interest, and Office of the United States Trustee on June 27, 2011. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

GMAC Mortgage, LLC seeks relief from the automatic stay with respect to the real property commonly known as 540 Esgar Avenue, Modesto, California. The moving party has provided the Declaration of John Castagna to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Castagna Declaration fails to state that the Debtor has failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$304,000.00, as stated in the Castagna Declaration, while the value of the property is determined to be \$95,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the

property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow GMAC Mortgage, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow GMAC Mortgage, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 540 Esgar Avenue, Modesto, California.

No other or additional relief is granted.

23. 11-91982-E-7 JACK/CINDY LEWIS
RNH #1 Tamie L. Cummins
CITIMORTGAGE, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-17-11 [[9](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney and Chapter 7 Trustee, on June 17, 2011. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

CitiMortgage, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 4505 Wincanton Court, Salida, California. The moving party has provided the Declaration of Latrice Hill to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hill Declaration fails to state that the Debtors failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$344,717.87, as stated in the Hill Declaration, while the value of the property is determined to be \$156,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Debtors filed Non-opposition on June 24, 2011. Therefore, based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow CitiMortgage, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow CitiMortgage, Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 4505 Wincanton Court, Salida, California.

No other or additional relief is granted.

24. [11-91787](#)-E-7 DANNY GONZALEZ
RNH #1 Thomas O. Gillis
SETERUS, INC., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-17-11 [\[10\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney and Chapter 7 Trustee on June 17, 2011. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Seterus, Inc. seeks relief from the automatic stay with respect to the real property commonly known as 813 Los Gatos Way, Modesto, California. The moving party has provided the Declaration of Amy Wooten to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wooten Declaration states that the Debtor failed to make one postpetition payment, with a total of \$1,068.75 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$256,500.00, as stated in the Wooten Declaration, while the value of the property is determined to be \$140,684.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the

collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Seterus, Inc., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Seterus, Inc., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 813 Los Gatos Way, Modesto, California.

No other or additional relief is granted.

25. [11-90888](#)-E-12E JOHN/DORALICE ROCHA
WJS #1 Hagop T. Bedoyan
Jacob L. Eaton
AMERICAN AGCREDIT, PCA, ET AL., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-24-11 [[63](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on June 24, 2011. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtors and another Creditor having filed opposition, the court will address the merits of the motion.

The court's tentative decision is to deny the Motion for Relief from the Automatic Stay without prejudice. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

American AgCredit, FLCA and American AgCredit, PCA seek relief from the automatic stay with respect to the real property commonly known as 6907 Avenue 228, Tulare, California. The moving party has provided the Declaration of William Hoobler to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Hoobler Declaration fails to state that the Debtor defaulted in any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$2,228,429.84 (including \$1,792,914.94 secured by movant's first trust deed), as stated in the Hoobler Declaration, while the value of the property is stated to be \$2,800,000.00, as stated in Schedules A and D filed by Debtor.

The Creditor also seeks to offer the Declaration of Janie M. Gatzman, a licensed real estate appraiser with 8 years' experience, who opines that the value of the property is \$1,900,000.00. This Declaration is accompanied by a true and correct copy of the appraisal, attached as "Exhibit A."

Creditor A.L. Gilbert Company, the holder of a second lien on the subject property, opposes Movant's motion on the grounds that AgCredit's claim is adequately secured by the property and there is no good cause to support lifting the automatic stay. A.L. Gilbert Company argues that the movant is adequately protected since the Debtors are currently making payments to it and because their proposed plan provides for continued payments of \$7,137.69 per month. A.L. Gilbert Company also argues that lifting the stay would interfere with Debtors' ability to pay off their debts as the property and anticipated

equity is integral to Debtors' Chapter 12 plan. A.L. Gilbert also contends that lifting the stay would injury not only the Debtors but also other secured credits, like A.L. Gilbert.

The Debtors also opposed the motion, again arguing that AgCredit is adequately protected as Debtors are making adequate protection payments to the creditor and will continue to do so until their plan is confirmed. Debtors also dispute the value given by AgCredit, requesting that the court set up an evidentiary hearing to determine the exact value of the farmland. Debtors represent that they are currently getting the property appraised and expect it to be completed by the end of this month. Debtors also contend that the property is necessary for their reorganization as the proceeds they receive from the sale of the property would help pay off if not completely pay off, the debt owed on the property. In a Declaration filed by the Debtors, they assert that they have been marketing the property for sale and have received an offer for \$2.2. million.

AgCredit filed a response to A.L. Gilbert Company's and Debtors' opposition, arguing that there is no equity in the property since, based on the trends for that property, the property is continually depreciating. AgCredit also argues that Debtors have not submitted any admissible evidence to support their valuation of the property and therefore their value should not be taken into account. AgCredit also again contends that the property is not necessary for reorganization, referring to the arguments it raised in its objection to the confirmation of Debtors' Chapter 12 plan filed separately.

At this early stage in the case, the court is inclined to give the Debtors a little more leeway. The Debtors have shown they have been actively pursuing a sale of the property, having already received a lease-purchase offer for \$2.2 million. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. Section 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. Section 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Instead, once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Debtors have established that the property is necessary for their effective reorganization. The debt owed to AgCredit is approximately \$1.7 million, selling the property for \$2.2 million would allow the Debtors to not only pay off that debt but also help Debtors pay down the debt owed to A.L. Credit Company. This makes the property necessary for Debtors' reorganization. Therefore, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon

review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is denied without prejudice.

26. [11-91795](#)-E-7 KULWANT SINGH AND
BTM #1 HARJINDER HUNDAL
Thomas P. Hogan
VOLVO FINANCIAL SERVICES, VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-15-11 [[10](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee and Office of the United States Trustee on June 14, 2011. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has not been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The court has determined that oral argument will not be of assistance in resolving this matter. No oral argument will be presented and the court shall issue its ruling from the pleadings filed by the parties.

The Motion for Relief from the Automatic Stay is denied without prejudice. No appearance required.

Creditor Volvo Financial Services' motion suffers from a service of process defect. The creditor did not serve the notice of hearing or the affidavit on the necessary parties. This is cause to deny the motion. The motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion for Relieve from Automatic Stay is denied without prejudice.

27. [11-91797-E-7](#) CARY/JOYCE SUMMERS
PD #1 Thomas P. Hogan
WELLS FARGO BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-15-11 [[10](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, other interested party and Office of the United States Trustee on June 15, 2011. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 630 Newcomb Avenue, Turlock, California. The moving party has provided the Declaration of Teresa J. Williams to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Williams Declaration fails to state that the Debtor failed to make any postpetition payments. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$260,138.04 (including \$272,536.04 secured by movant's first trust deed), as stated in the Williams Declaration, while the value of the property is determined to be \$184,000.00, as stated in Schedules A and D filed by Debtor.

Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). The Debtors filed Non-Opposition on June 17, 2011. Therefore, based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

The moving party has failed to plead adequate facts and present sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 630 Newcomb Avenue, Turlock, California.

No other or additional relief is granted.

28. [11-91398](#)-E-7 JIMMY/BARBARA RUTHERFORD
PD #1 Thomas O. Gillis
JP MORGAN CHASE BANK, N.A., VS.

HEARING - MOTION FOR
RELIEF FROM AUTOMATIC STAY
6-24-11 [\[16\]](#)

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Proper Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, and Office of the United States Trustee on June 24, 2011. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

Final Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is granted. No appearance required.

JPMorgan Chase Bank, National Association seeks relief from the automatic stay with respect to the real property commonly known as 431 Harriett, Waterford, California. The moving party has provided the Declaration of Maria Almeraz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Almeraz Declaration states that the Debtor failed to make one postpetition payment, with a total of \$1,282.48 in postpetition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$185,548.54, as stated in the Almeraz Declaration, while the value of the property is determined to be \$93,000.00, as stated in Schedules A and D filed by Debtor.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has failed to make required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor failed to make postpetition payments. 11 U.S.C. Section 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Movant also asks for relief under 11 U.S.C. Section 362(d)(2). Once a movant under 11 U.S.C. Section 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. See *In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).]

The court shall issue a minute order terminating and vacating the automatic stay to allow JPMorgan Chase Bank, National Association, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees.

No other or additional relief is granted by the court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. Section 362(a) are immediately vacated to allow JPMorgan Chase Bank, National Association, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 431 Harriett, Waterford, California.

No other or additional relief is granted.